

2019-001045

Klamath County, Oregon



00235260201900010450100100

02/05/2019 08:50:25 AM

Fee: \$127.00

*Space above this line for Recorder's use.*

***After recording, return to:***

**Grantee**

Oregon DEQ  
Oregon Department of Environmental Quality  
475 NE Bellevue Drive, Suite #110  
Bend, OR 97701  
Attention: Charles Kennedy

**Grantor**

M&M Services, LLC  
PO Box 1093  
Medford, OR 97501

**EASEMENT AND EQUITABLE SERVITUDES**

This grant of Easement and acceptance of Equitable Servitudes ("EES") is made on January 4, 2019 between M&M Service, LLC ("***Grantor***") and the State of Oregon, acting by and through the Oregon Department of Environmental Quality ("DEQ" or "***Grantee***").

**RECITALS**

A. Grantor is the owner of certain real property located at **5419 South Sixth Street, Klamath Falls** in Klamath County, Oregon in Klamath County Tax Map #39S09E02AD, Tax Lot #09200 (the "***Property***") the location of which is more particularly described in Exhibit A to this EES. The Property is referenced under the name Homedale Shell, LUST #18-91-0032 and Homedale Texaco and Food Mart, LUST #18-02-0002 and USTC File No. #1519 in the files of DEQ's Environmental Cleanup Program and UST Program at Eastern Region office located at 475 NE Bellevue, Suite 110, Bend, Oregon, and telephone #541-388-6146. Interested parties may contact the Eastern Region office to review a detailed description of the risks from contamination remaining at the Property and described in Risk Based Corrective Action Plan Former May-Slade Oil Company Shell Facility, 5419 South Sixth Street, Klamath Falls Oregon, LUST Nos. 18-91-0032 And 18-02-0002; Prepared by Environmental Technologies Group, Inc. for M&M Services LLC on November 8, 2018.

B. On January 4, 2019, the Oregon Department of Environmental Quality selected the remedial action for the Property set forth in Closure Work Plan and the Risk Based Corrective Action Plan for the Property prepared by Environmental Technologies Group, Inc. for M&M Services LLC on June 13, 2018 and November 8, 2018. The remedial action selected requires, among other things: contaminant mass removal and institutional & engineering controls.

C. On November 8, 2018, Grantor entered into Agreement with DEQ, under which Grantor agreed to implement the selected remedial action, including the required institutional and engineering controls.

D. This EES is intended to further the implementation of the selected remedial action and protect human health and the environment.

E. Nothing in this Easement and Equitable Servitude constitutes an admission by Grantor of any liability for the contamination described in the Easement and Equitable Servitude.

## **1. DEFINITIONS**

- 1.1 "Acceptable risk level" has the meaning set forth in Oregon Revised Statute (ORS) 465.315 and Oregon Administrative Rule (OAR) 340-122-0115.
- 1.2 "Beneficial use" has the meaning set forth in OAR 340-122-0115.
- 1.3 "DEQ" means the Oregon Department of Environmental Quality, and its employees, agents, and authorized representatives. "DEQ" also means any successor or assign of DEQ under the laws of Oregon, including but not limited to any entity or instrumentality of the State of Oregon authorized to perform any of the functions or to exercise any of the powers currently performed or exercised by DEQ.
- 1.4 "Engineering control" has the meaning set forth in OAR 340-122-0115
- 1.5 "Hazardous substance" has the meaning set forth in ORS 465.200
- 1.6 "Owner" means any person or entity, including Grantor, who at any time owns, occupies, or acquires any right, title, or interest in or to any portion of the Property or a vendee's interest of record to any portion of the Property, including any successor, heir, assign or holder of title or a vendee's interest of record to any portion of the Property, but excluding any entity or person who holds such interest solely for the security for the payment of an obligation and does not possess or control use of the Property.
- 1.7 "Remedial Action" has the meaning set forth in ORS 465.200 and OAR 340-122-0115.

## **2. GENERAL DECLARATION**

2.1 Grantor, in consideration of Grantee's issuance of a No Further Action letter with conditions, grants to DEQ an Easement for access and accepts the Equitable Servitudes described in this instrument and, in so doing, declares that the Property is now subject to and must in future be conveyed, transferred, leased, encumbered, occupied, built upon, or otherwise used or improved, in whole or in part, subject to this EES.

2.2 Each condition and restriction set forth in this EES touches and concerns the Property and the equitable servitudes granted in Section 3 and easement granted in Section 4 below, runs with the land for all purposes, is binding upon all current and future owners of the Property as set forth in this EES, and inures to the benefit of the State of Oregon. Grantor further conveys to DEQ the perpetual right to enforce the conditions and restrictions set forth in this EES.

### **3. EQUITABLE SERVITUDES (REQUIRED ACTIONS AND RESTRICTIONS ON USE)**

**3.1. Groundwater Use Restrictions And Hazardous Substance Management.** Do not use the contaminated groundwater for any purpose. Owner may not extract through wells or by other means or use the groundwater at the Property for consumption or other beneficial use. This prohibition does not apply to extraction of groundwater associated with groundwater treatment or monitoring activities approved by DEQ or to temporary dewatering activities related to construction, development, or the installation of sewer or utilities at the Property. Owner must conduct a waste determination on any groundwater that is extracted during such monitoring, treatment, or dewatering activities and handle, store and manage waste water according to applicable laws. Contaminated groundwater and soil may present a risk to site construction or excavation workers. Excavated areas were backfilled with clean fill dirt. Appropriate health and safety protocols must be followed during site development or utility work in the contaminant impacted area. DEQ shall be notified in the event that site development or other intrusive activities are planned for the site where contaminated soil or groundwater exists. If contaminated soil is removed by an owner or operator, it must be managed and disposed per all applicable local, County, State and Federal rules per a DEQ-approved contaminated media management plan.

**3.2. Vapor Barrier Engineering Control Use Requirements.** Site soils consist of sandy silt with groundwater between 4 feet and 6 feet below ground surface. Excavated areas were backfilled with clean fill dirt. Petroleum hydrocarbons and petroleum related volatile organic compounds (VOCs), including benzene are present in subsurface soil, groundwater and soil pore space above risk based concentrations for vapor intrusion into occupational buildings. The petroleum and petroleum related VOCs are attributable to releases from a former gasoline and diesel retail business that operated on the site. If development occurs on site, DEQ requires installation of engineered passive or active VOC vapor mitigation systems construction for future buildings within 15 feet of soil and groundwater contamination or for any utility construction that creates preferential pathways for contaminant vapors to intrude into buildings; or additional investigation & remediation of VOC concentrations in subsurface soil, soil gas and groundwater

are completed that demonstrates an absence of unacceptable human health risks associated with the vapor intrusion occupational exposure scenario.

1.1. **Land Use Restrictions.** The following operations and uses are prohibited on the Property: Residential use of any type; and Agricultural (food-crop) use of any type.

1.2. **Use of the Property.** Owner may not occupy or allow other parties to occupy the Property unless the controls listed in this Section 3 are maintained.

## **2. EASEMENT (RIGHT OF ENTRY)**

During reasonable hours and subject to reasonable security requirements, DEQ may enter upon and inspect any portion of the Property to determine whether the requirements of this EES have been or are being complied with. Except when necessary to address an imminent threat to human health or the environment, DEQ will use its best efforts to notify the Owner 72 hours before DEQ entry to the Property. DEQ may enter upon the Property at any time to abate, mitigate, or cure at the expense of the Owner the violation of any condition or restriction contained in this EES, provided DEQ first gives written notice of the violation to Owner describing what is necessary to correct the violation and Owner fails to cure the violation within the time specified in such notice. Any such entry by DEQ to evaluate compliance or to abate, mitigate, or cure a violation may not be deemed a trespass.

## **3. RELEASE OF RESTRICTIONS**

3.1. Owner may request release of any or all of the conditions or restrictions contained in this EES by submitting such request to the DEQ in writing with evidence that the conditions or restrictions are no longer necessary to protect human health and the environment. The decision to release any or all of the conditions or restrictions in this EES will be within the sole discretion of DEQ.

3.2. Upon a determination pursuant to Subsection 5.1, DEQ will, as appropriate, execute and deliver to Owner a release of specific conditions or restrictions, or a release of this EES in its entirety.

## **4. GENERAL PROVISIONS**

4.1. **Notice of Transfer/Change of Use.** Owner must notify DEQ within 10 days after the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of Owner's interest in or occupancy of the Property. Such notice must include the full name and address of the Party to whom Owner has transferred an interest or right of occupancy. In addition, Owner must notify DEQ a minimum of 10 days before the effective date of any change in use of the Property that might expose human or ecological receptors to hazardous substances. Such notice must include complete details of any planned development activities or change in use. Notwithstanding the foregoing, Owner may not commence any development inconsistent with the conditions or restrictions in Section 3 without prior written approval from DEQ as provided

in Subsection 3 of this EES or removal of the condition or restriction as provided in Subsection 5.1. This subsection does not apply to the grant or conveyance of a security interest in the Property.

**4.2. Zoning Changes.** Owner must notify DEQ no less than 30 days before Owner's petitioning for or filing of any document initiating a rezoning of the Property that would change the base zone of the Property under the Klamath County zoning code or any successor code. As of the date of this EES, the base zone of the Property is General Commercial.

**4.3. Cost Recovery.** Owner will pay DEQ's costs for review and oversight of implementation of and compliance with the provisions in this EES, including but not limited to periodic review and tracking of actions required by this EES. This EES constitutes the binding agreement by the Owner to reimburse DEQ for all such eligible review and oversight costs. DEQ will establish a cost recovery account for tracking and invoicing DEQ project costs. DEQ will provide the Owner with a monthly statement and direct labor summary. DEQ costs will include direct and indirect costs. Direct costs include site-specific expenses and legal costs. Indirect costs are those general management and support costs of the State of Oregon and DEQ allocable to DEQ oversight of this EES and not charged as direct site-specific costs. Indirect charges are based on actual costs and are applied as a percentage of direct personal services costs.

**4.4. Inspection and Reporting.** Owner will immediately notify DEQ of any condition or occurrence at the Property that does not conform with provisions of this EES.

**4.5. Reference in Deed.** A reference to this EES, including its location in the public records, must be recited in any deed conveying the Property or any portion of the Property. Each condition and restriction contained in this EES runs with the land so burdened until such time as the condition or restriction is removed by written certification from DEQ, recorded in the deed records of the County in which the Property is located, certifying that the condition or restriction is no longer required to protect human health or the environment.

**4.6. Effect of Recording.** Upon the recording of this EES, all future Owners are conclusively deemed to have consented and agreed to every condition and restriction contained in this EES, whether or not any reference to this EES is contained in an instrument by which such person or entity occupies or acquires an interest in the Property.

**4.7. Enforcement and Remedies.** Upon any violation of any condition or restriction contained in this EES, the State of Oregon, in addition to the remedies described in Section 4, may enforce this EES or seek available legal or equitable remedies to enforce this EES, including civil penalties as set forth in ORS 465.900.

**4.8. IN WITNESS WHEREOF** Grantor and Grantee have executed this Easement and Equitable Servitude as of the date and year first set forth above.

BY SIGNATURE BELOW, THE STATE OF OREGON APPROVES AND ACCEPTS THIS  
CONVEYANCE PURSUANT TO ORS 93.808.

GRANTOR: M&M Services, LLC

By: [Signature] Date: 1/10/19  
Todd Marthoski

STATE OF OREGON           )  
  ) ss.  
County of Klamath )

The foregoing instrument is acknowledged before me this 10<sup>th</sup> day of  
January, 2019, by Todd Marthoski of M&M Services, LLC on its behalf.



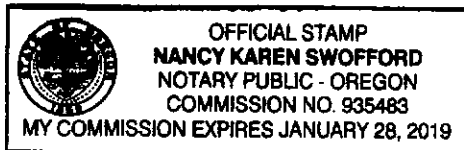
[Signature]  
NOTARY PUBLIC FOR OREGON  
My commission expires: April 24, 2020

GRANTEE: State of Oregon, Department of Environmental Quality

By: [Signature] Date: 1/15/2019  
David Anderson, Tanks, Cleanup and Emergency Response Manager, Eastern Region

STATE OF OREGON           )  
  ) ss.  
County of Klamath )

The foregoing instrument is acknowledged before me this 15<sup>th</sup> day of  
January, 2019, by \_\_\_\_\_ David Anderson of the Oregon  
Department of Environmental Quality, on its behalf.



[Signature]  
NOTARY PUBLIC FOR OREGON  
My commission expires: 1/28/19

## **EXHIBIT A**

### **Legal Description of the Property**

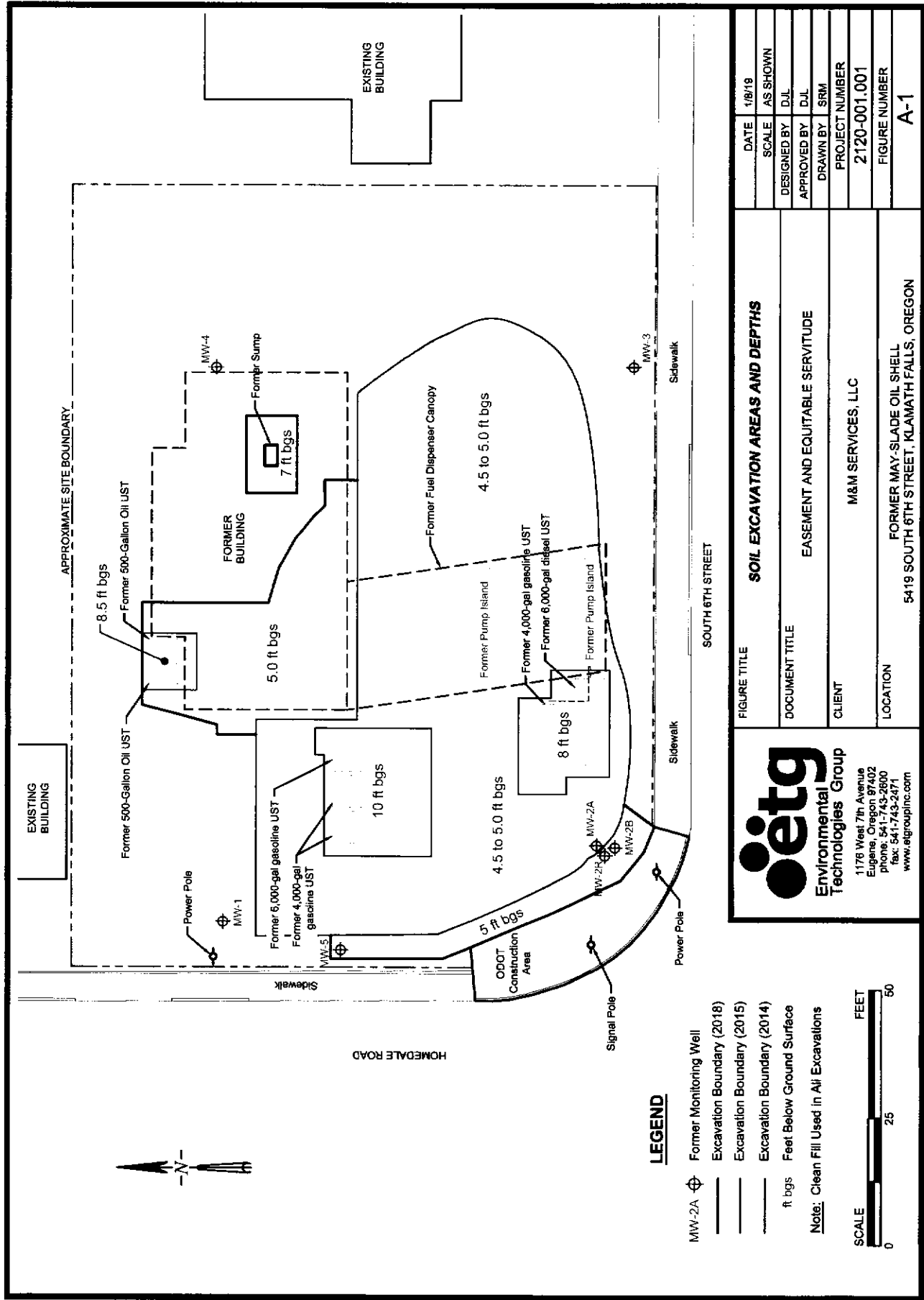
TAX LOT #09200, SECTION 2, TOWNSHIP 39 SOUTH, RANGE 9 EAST OF THE WILLAMETTE MERIDIAN IN THE CITY OF KLAMATH FALLS, COUNTY OF KLAMATH AND STATE OF OREGON.

- 1.1. **Groundwater Use Restrictions And Hazardous Substance Management.** Do not use the contaminated groundwater for any purpose. Owner may not extract through wells or by other means or use the groundwater at the Property for consumption or other beneficial use. This prohibition does not apply to extraction of groundwater associated with groundwater treatment or monitoring activities approved by DEQ or to temporary dewatering activities related to construction, development, or the installation of sewer or utilities at the Property. Owner must conduct a waste determination on any groundwater that is extracted during such monitoring, treatment, or dewatering activities and handle, store and manage waste water according to applicable laws. Contaminated groundwater and soil may present a risk to site construction or excavation workers. Excavated areas were backfilled with clean fill dirt. Appropriate health and safety protocols must be followed during site development or utility work in the contaminant impacted area. DEQ shall be notified in the event that site development or other intrusive activities are planned for the site where contaminated soil or groundwater exists. If contaminated soil is removed by an owner or operator, it must be managed and disposed per all applicable local, County, State and Federal rules per a DEQ-approved contaminated media management plan.
- 1.2. **Vapor Barrier Engineering Control Use Requirements.** Site soils consist of sandy silt with groundwater between 4 feet and 6 feet below ground surface. Excavated areas were backfilled with clean fill dirt. Petroleum hydrocarbons and petroleum related volatile organic compounds (VOCs), including benzene are present in subsurface soil, groundwater and soil pore space above risk based concentrations for vapor intrusion into occupational buildings. The petroleum and petroleum related VOCs are attributable to releases from a former gasoline and diesel retail business that operated on the site. If development occurs on site, DEQ requires installation of engineered passive or active VOC vapor mitigation systems construction for future buildings within 15 feet of soil and groundwater contamination or for any utility construction that creates preferential pathways for contaminant vapors to intrude into buildings or additional investigation & remediation of VOC concentrations in subsurface soil, soil gas and groundwater

that demonstrates an absence of unacceptable human health risks associated with the vapor intrusion occupational exposure pathway exposure scenario.

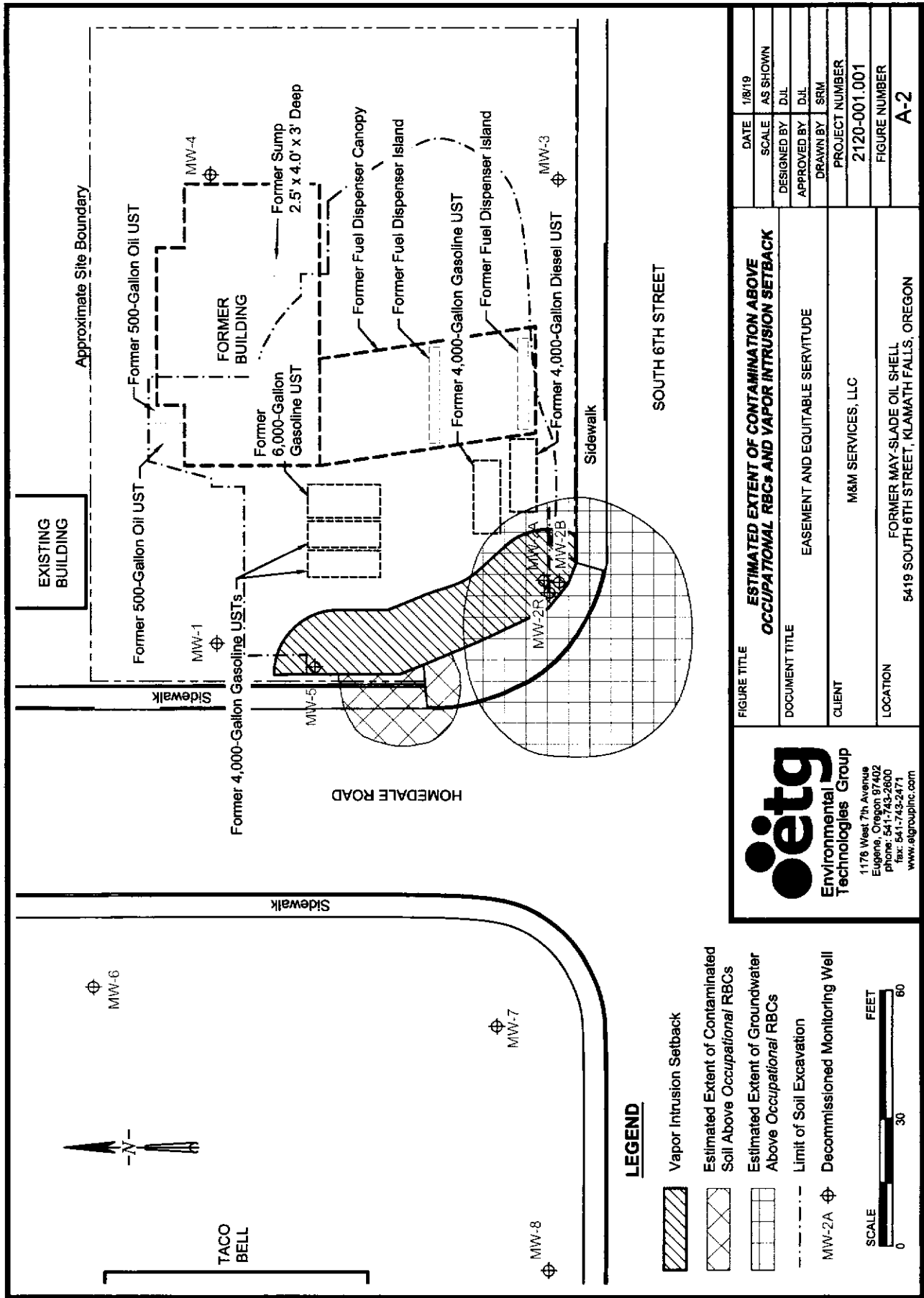
- 1.3. **Land Use Restrictions.** The following operations and uses are prohibited on the Property: Residential use of any type; and Agricultural (food-crop) use of any type.
- 1.4. **Use of the Property.** Owner may not occupy or allow other parties to occupy the Property unless the controls listed in this Section 3 are maintained.





<b>FIGURE TITLE</b>		DATE	1/8/19
<b>SOIL EXCAVATION AREAS AND DEPTHS</b>		SCALE	AS SHOWN
<b>DOCUMENT TITLE</b>		DESIGNED BY	DJL
<b>EASEMENT AND EQUITABLE SERVITUDE</b>		APPROVED BY	DJL
<b>CLIENT</b>		DRAWN BY	SRM
<b>M&amp;M SERVICES, LLC</b>		PROJECT NUMBER	2120-001.001
<b>LOCATION</b>		FIGURE NUMBER	A-1
<b>FORMER MAY-SLADE OIL SHELL</b>			
<b>5419 SOUTH 6TH STREET, KLANATH FALLS, OREGON</b>			

**etg**  
**Environmental Technologies Group**  
 1178 West 7th Avenue  
 Eugene, Oregon 97402  
 phone: 541-743-2800  
 fax: 541-743-2471  
 www.etgroupinc.com



**Environmental Technologies Group**  
 1178 West 7th Avenue  
 Eugene, Oregon 97402  
 Phone: 541-743-2800  
 Fax: 541-743-2471  
[www.etgroupinc.com](http://www.etgroupinc.com)

FIGURE TITLE	ESTIMATED EXTENT OF CONTAMINATION ABOVE OCCUPATIONAL RBCs AND VAPOR INTRUSION SETBACK			
	DOCUMENT TITLE	EASEMENT AND EQUITABLE SERVITUDE		
	CLIENT	M&M SERVICES, LLC		
	LOCATION	FORMER MAY-SLADE OIL SHELL 5419 SOUTH 6TH STREET, KLAMATH FALLS, OREGON		
DATE	1/8/19	SCALE	AS SHOWN	
DESIGNED BY	DIL	APPROVED BY	DIL	
DRAWN BY	SRM	PROJECT NUMBER	2120-001.001	
		FIGURE NUMBER	A-2	